Calendar No. 100

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-64

TO AMEND AND EXTEND THE TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978, AND FOR OTHER PURPOSES

APRIL 26, 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 726]

The Select Committee on Indian Affairs to which was referred the bill (S. 726) to amend and extend the Tribally Controlled Community College Assistance Act of 1978, and for other purposes having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 726 is to amend provisions of the Tribally Controlled Community College Assistance Act of 1978, Public Law 95-471, and to extend the authorizations for appropriations through fiscal year 1987.

BACKGROUND AND NEED

The Tribally Controlled Community College Assistance Act of 1978, Public Law 95-471, became law on October 17, 1978. The Act authorizes grants for operating and improving tribally controlled community colleges and mandates the use of a formula to assure stable and equitable funding for tribally controlled community colleges. Title I of the Act provides authorizations for appropriations through fiscal year 1981 to tribally controlled community colleges that have been determined to be feasible and which will service a reasonable service population. The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, extended the authorizations through

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fiscal year 1984. Title I of the Act applies to all Indian community colleges with the exception of the Navajo Community College. As originally enacted, Title I requires reauthorization for operation and maintenance grants.

Title II of the Act is the Navajo Community College Assistance Act of 1978 and applies exclusively to Navajo Community College, providing operation and maintenance grants for any fiscal year beginning on or after October 1, 1979. As originally enacted, Title II did not require reauthorization for operation and maintenance grants. Title II appropriations authorizations were extended through 1984 by the Omnibus Budget Reconciliation Act of 1981.

The Select Committee on Indian Affairs held a hearing on the proposed reauthorization of the Tribally Controlled Community College Assistance Act on June 15, 1982. Testimony was received from the Department of the Interior, the American Indian Higher Education Consortium, and from representatives and presidents of several of the eighteen existing tribally controlled community colleges. All witnesses testified to the valuable role community colleges have played in developing the capacity of tribal governments and Indian individuals to achieve Indian self-determination.

Tribally controlled community colleges have proven to be extraordinarily effective in responding to the educational needs of their respective tribal communities. In the past, severely depressed economic conditions and the geographic isolation of many reservation communities has made access to higher education virtually impossible for most reservation Indians. Because of cultural differences and language barriers, dropout rates of Indians at traditional institutions of higher education have been high, and the skills acquired at such colleges have not always been relevant to or supportive of reservation economies. Tribally controlled community colleges have provided access to higher education for a large number of Indian individuals, providing community college students with opportunities to enhance their employability, and in many instances, to pursue and obtain advanced degrees. The capacity of tribally controlled community colleges to provide culturally- and community-relevant programs makes them uniquely suited to respond to the long-unmet educational needs of tribal communities.

Tribally controlled community colleges have made outstanding progress in meeting the educational goals that they have established for themselves. Fourteen of the eighteen existing colleges have achieved full accreditation or accreditation candidacy status. In fiscal year 1982, full-time equivalent enrollment increased by 11.5 per cent over the previous fiscal year and more tribally controlled community college students continued their education in baccalaureate and graduate degree programs. Although Indian dropout rates at non-Indian higher education institutions have traditionally been high, a recent North Dakota study which found a dropout rate of 90 percent for Indian students scheduled to complete a degree plan at non-Indian institutions, also found that for Indian students completing a two year degree plan at a tribally controlled community college and transferring to a four-year non-Indian institution, there was an 85 percent completion rate. Many of the tribally controlled community colleges have also developed vocational education departments to serve non-academic oriented students.

The colleges have made steady progress in expanding their academic curricula and serving as a particularly valuable resource to tribal communities.

This progress has been realized despite the fact that reservation economies are among those hardest hit by economic recession and substantial reductions in Federal expenditures. Unemployment rates on many reservations range from 75 to 90 percent, with continuing widespread reductions in force in the Bureau of Indian Affairs and other Federal agencies contributing to growing unemployment among Indian communities nationwide. The lack of alternatives to Federal employment is further compounded by the geographic isolation of most Indian reservations which inhibits economic development initiatives for Indian reservations from being pursued by the private sector. Economic recession has also had severe negative impacts upon the development of natural resources—resources that for a number of tribes, constitute the only means of supporting economic life on the reservations independent of Federal sources of employment or financial support. Many other tribes however are forced to depend upon these Federal sources for support of failing reservation economies at a time when Administration budget requests indicate a sharply decreasing Federal commitment to the economic survival of Indian reservations.

In this context, tribally controlled community colleges are confronting a substantially increased demand for education as newly unemployed individuals turn to the colleges for training in new employment skills and job retraining. With the increased economic pressures on tribes, tribal governments are searching for methods of streamlining the processes of government and seeking the assistance of the colleges in this effort to learn the latest techniques of achieving efficiency in management, accounting, and economic development. Given the expanding needs to which they are attempting to respond, tribally controlled community colleges are playing a vital role in the realization of Indian self-determination.

There are currently eighteen colleges in seven states receiving funds under the authority of the Tribally Controlled Community College Assistance Act. Those colleges are:

Blackfeet Community College, Browning, Montana; College of Ganado, Ganado, Arizona; Cheyenne River Community College, Eagle Butte, South Dakota; Deganawidah-Quetzalcoatl University, Davis, California; Dull Knife Memorial College, Lame Deer, Montana; Fort Berthold Community College, New Town, North Dakota; Fort Peck Community College, Poplar, Montana; Little Big Horn Community College, Crow Agency, Montana; Navajo Community College, Tsaile, Arizona.

Oglala Sioux Community College, Kyle, South Dakota; Salish-Kootenai Community College, Pablo, Montana; Sinte Gleska College, Rosebud, South Dakota; Sisseton-Wahpeton College Center, Sisseton, South Dakota; Standing Rock Community College, Fort Yates, North Dakota; Turtle Mountain Community College, Belcourt, North Dakota; Little Hoop Community College, Fort Totten, North Dakota; Lummi College of Fisheries, Lummi Island, Washington; Nebraska Indian Community College, Winnebago, Nebraska.

In fiscal year 1982, these eighteen colleges served a total of 2,887 full-time equivalent Indian students. The graduation data for fiscal year 1980 through fiscal year 1982 shows a major increase in the number of students graduated from tribally controlled community colleges, with 490 students graduating in 1982.

In its fiscal year 1982 report to Congress on the tribally controlled community colleges, the Bureau of Indian Affairs recommended that Congress consider legislation to extend Public Law 95-471 during the 98th Congress. The Bureau also recommended continued base funding for the tribally controlled community colleges on the grounds that stable funding is a prime requisite for accreditation, and that the accreditation process assures quality programs for tribal members.

Major Provisions

During the Committee's hearings on the reauthorization of the Tribally Controlled Community College Assistance Act, tribal college presidents cited a number of problems that they were experiencing with operating under the current law. S. 726 seeks to address these problems by allowing tribally controlled community colleges to function in a setting that is equivalent to other post-secondary institutions.

S. 726 allows tribally controlled community colleges to achieve the stability of funding that is so critical to obtaining accreditation by providing for forward funding of appropriations under the Act. This provision allows tribally controlled community colleges to be funded on the same basis as all other post-secondary institutions that receive funding under the Higher Education Act.

S. 726 authorizes the Secretary of the Interior to reserve from amounts appropriated under the Act, amounts necessary to make grants of $15,000 to five applicants [tribes or tribal entities] to determine the need and potential for the establishment of tribally controlled community colleges or for developing proposals for the establishment of such colleges.

S. 726 also provides for the evaluation and renovation of facilities located on Indian reservations and which are scheduled for closure or abandonment by the Bureau of Indian Affairs. Rather than allowing these buildings to deteriorate and fall into an unredeemable state of disrepair, S. 726 permits an evaluation of the facilities to be conducted by the General Services Administration and a report to be made to Congress by the Administrator of General Services. If a college is a current recipient of Public Law 95-471 funds and is accredited by a nationally recognized accrediting agency, it is eligible for a grant for the construction of new facilities recommended by the General Services Administration Study provided that the college supplies 20 percent of the cost of such construction. The availability of facilities for use by a college is a crucial element in the determinations by accrediting associations of a college's qualifications for candidacy or full accreditation status.

Consistent with Administration policy, S. 726 provides for the stimulation of private sector investment in education by establishing an endowment program under the Act. A matching requirement assures that the growth of endowment funds will be a joint

effort of the college and its private contributors. Endowment funds are required to be deposited in a trust fund maintained at a federally-insured banking or savings institution. The Committee views this provision as integral to the development of the colleges' capacities to become self-supporting in the future.

Subject to appropriations, S. 726 allows existing colleges to receive the same amount of funds that each was allocated in the previous fiscal year before newly-eligible colleges can receive funding. In the succeeding fiscal year, colleges which were eligible but did not receive funding in the preceding fiscal year are eligible for funding on the same basis as existing colleges.

The Federal Trust Responsibility

The legal basis for the Tribally Controlled Community College Assistance Act and the proposed reauthorization of the Act is the underlying trust obligation of the Federal government to Indian tribes when the United States is involved in the provision of Indian education. The Select Committee on Indian Affairs recommends that the Senate pass S. 726 in fulfillment of the United States' continuing legal trust responsibility as it relates to education for Indian students.

The federal policy which supports the trust is and always has been to insure the welfare and survival of Indian tribes and Indian people. This includes an obligation to provide those services necessary to protect and enhance Indian lands, resources, and self-government, as well as those social programs required to raise the standard of living and the social well-being of the Indian people to a level equivalent to that enjoyed by non-Indians. This duty has long been recognized implicitly by Congress in numerous acts, including the Snyder Act of 1921, the Indian Reorganization Act of 1934, the Johnson-O'Malley Act of 1934, the Native American Programs Act of 1974, the Indian Self-Determination and Education Assistance Act of 1975, and the Indian Health Care Improvement Act of 1976. [A comparative analysis of United States' trust responsibility as it relates to Indian physical and human resources is set forth in Chapter Four of the Final Report of the American Indian Policy Review Commission to the United States Congress.] The reauthorization of the Tribally Controlled Community College Assistance Act of 1978 restates the commitment of Congress to uphold and strengthen the United States' trust responsibility for the education of Indian students.

Legislative History

S. 726 was introduced in the Senate on March 8, 1983 by Senator Andrews for himself and Senators Goldwater, Gorton, DeConcini, Inouye, Melcher, Abdnor, Baucus, Burdick, and Pressler. S. 726 was ordered reported by the Select Committee on Indian Affairs without amendment on April 13, 1983. A similar bill was introduced in the House of Representatives on March 23, 1983 by Congressman Simon for himself and sixteen co-sponsors. The House bill, H.R. 2307, was reported out of the full House Education and Labor Committee on April 13, 1983 with an amendment.

In the 97th Congress, S. 2623, a bill to reauthorize the Tribally Controlled Community College Assistance Act of 1978, was introduced in the Senate by Senator Cohen for himself and Senators Andrews, Melcher, Inouye, Baucus, Burdick, Abdnor, and Pressler on June 10, 1982. The Indian Affairs Committee held a hearing on the bill on June 15, 1982. S. 2623 was ordered to be reported out of the Select Committee on Indian Affairs with an amendment in the nature of a substitute on September 29, 1982. The bill passed the Senate with the amendment in the nature of a substitute by voice vote on December 16, 1983.

A companion bill in the 97th Congress, H.R. 6485, was introduced in the House of Representatives on May 25, 1982, by Congressman Simon for himself and 14 co-sponsors. The Subcommittee on Post-Secondary Education of the House Education and Labor Committee held a hearing on May 4, 1982, on draft legislation to amend and extend Public Law 95-471. The bill was reported out of the House Committee on Education and Labor on July 27, 1982. H.R. 6485 passed the House on a voice vote on December 17, 1982.

The House-Senate conference on S. 2623 and H.R. 6485 was held on December 18, 1982, following Senate disagreement to the House amendment by voice vote on December 17, 1982. The Senate receded to two House amendments in conference: the first amendment characterized the provision of education to Indian students under the authority of the tribally controlled community college program as "a fulfillment of the continuing legal trust responsibility of the Federal government as it relates to education for Indian students"; the second amendment authorized legislative review and veto of regulations issued pursuant to the Tribally Controlled Community College Assistance Act. These two amendments were subsequently cited as grounds for the President's veto of the conference bill, S. 2623, in the President's message accompanying a pocket veto issued by the White House on January 3, 1983.

Administration Position

The Administration is opposed to the amendment of the "Definitions" section of the Act proposed by S. 726 on the basis that it has found current definitions to be accurate and appropriate. S. 726 amends the "Definitions" section so that consistent with the Federal policy of Indian self-determination, the term "Indian" is to be defined by the respective Indian tribes' determinations of their membership. S. 726 also amends the current manner of determining student count to provide for a more accurate means of calculating the total number of students enrolled in a tribally controlled community college during the full academic year, including summer sessions. The average which the amending student count authorizes accounts for increases and decreases in student enrollment through the academic year computed at the conclusion of the third week of each academic term.

The Administration is opposed to amending language in S. 726 which includes in the "Purpose" section of the Act authority to use grants for the operation and improvement of tribally controlled community colleges not only to insure continued and expanded educational opportunities for Indian students but to allow for the

improvement and expansion of the physical resources of such institutions. The Administration states, "The implementation of a major new building program when there are so many other competing tribval needs appears to us to be duplicative, unwarranted, and inadvisable under current economic conditions. In addition, the assumption of the cost of an entire new building program, as well as renovation and maintenance, is ill-timed and could add to an already burgeoning budget deficit. Funds provided through the Bureau of Indian Affairs for the tribally controlled community colleges assistance program have been limited to program support only. We do not support broadening these limits." The Administration's concern for fiscal restraint is one shared by the Committee on Indian Affairs. In fact, the need for fiscal restraint is the motivating factor for amending the Act to allow the colleges to use Bureau of Indian Affairs' buildings located on Indian reservations that have been scheduled for closure or abandonment. Rather than allowing these buildings to sit vacant and unused for a number of years, during which time they can be expected to deteriorate and perhaps fall into an unredeembable state of disrepair, S. 726 permits an evaluation of the facilities to be conducted by the General Services Administration and a report to be made to Congress by the Administrator of General Services. Whether funds will be appropriated for the renovation and repair of unused BIA facilities is a spending decision that Congress will weigh in light of current economic conditions at the time such a report is made. If a college is a current recipient of Public Law 95-471 funds and is accredited by a nationally-recognized accrediting agency, it is eligible for a grant for the construction of new facilities recommended by the General Services Administration study provided that the college supplies 20 percent of the cost of construction. Critical in the determinations by accrediting associations of a college's qualifications for candidacy or full accreditation status is the availability of facilities to a college. There are no existing Department of Interior programs of which the authorization for construction contained in S. 726 is duplicative. Again, whether funds will be appropriated for 80 percent of the construction costs of new facilities is a spending decisio that Congress will weigh in light of current economic conditions and competing tribal needs at the time a report recommending such construction is received from the Administrator of General Services.

The Administration is opposed to language amending the present section 102 which directs the Secretary to make grants to tribally controlled community colleges, subject to appropriations. The Administration is opposed to the provision on the basis that it "would restrict unnecessarily the Secretary's ability to allocate funds efficiently". The Act currently vests the Secretary with authority to determine eligibility of tribally controlled community colleges for funding under Public Law 95-471 and to allocate appropriated funds on that basis. The intent of the amendment is not to restrict the Secretary's ability to allocate funds efficiently, but rather to allow the Secretary the flexibility to allocate funds within the authorized ceilings subject to appropriations.

S. 726 authorizes the Secretary of the Interior to reserve from amounts appropriated under the Act, amounts necessary to make

grants of $15,000 to five applicants [tribes or tribal entitles] to determine the need and potential for the establishment of such colleges. The Administration is opposed to the provision of planning grants, setting forth as reasons for its opposition, the following: "We believe it is likely that a tribe which is interested in such planning could provide $15,000 for planning from its own funds. We also believe tribal needs and interests, rather than additional funds, will best motivate the analysis and development that are necessary to meet new educational needs and opportunities. Accordingly, we have concluded that this analysis and planning is best done at the option of the individual tribes within available resources and as a part of their regular developmental processes. In light of the Administration's effort to decrease Federal spending, we cannot support a request for the additional funds this section would require." The section of S. 726 that authorizes planning grants does not require additional funds. Planning grant funds are to be drawn from existing appropriations currently authorized by the Act. Past experience with tribally controlled community colleges and applicants for Public Law 95-471 funds demonstrates that tribal needs and interests have consistently served as the basis for tribal initiatives in higher education. The Committee strongly disagrees with the implication of the Administration's statement which suggests that tribes will seek planning grants without any sincere intention of desiring to establish a tribally controlled community college. Further, the sufficiency of tribal resources to meet the financial needs involved in planning and developing a community college is doubtful. As stated above, Indian reservation economies are among those hardest hit by economic recession and substantial reductions in Federal expenditures, with unemployment rates on many reservations ranging from 75 to 90 percent. The need for education and training in new job skills has never been greater. This is a need to which tribally controlled community colleges have proven themselves uniquely capable of responding. Yet, it is precisely the conditions giving rise to such needs that make it difficult to impossible for most tribes to raise the revenues necessary to support planning and development efforts.

The Administration objects to the limitation of technical assistance grants to colleges already receiving funds under the Act on the basis that such a limitation is inherently unfair because institutions seeking to become qualified for grants may be in greater need of technical assistance than older, more established institutions. S. 726 provides for planning grants for those tribes which are seeking to establish a tribally controlled community college, and for those colleges which are seeking to become qualified for Public Law 95-471 programs, funds for eligibility studies are authorized by section 105 [redesignated section 106 by S. 726] of the Act. These funds are the counterpart of technical assistance grants to colleges already receiving funds under the Act.

Another objection of the Administration is to amending language of S. 726 which changes the current terminology of section 105 from "feasibility" studies required before a college can become eligible for Public Law 95-471 programs, to "eligibility" studies. The amendment is designed to clarify the purpose of the required studies, which is to assure a Secretarial determinaiton that there is jus-

tification for encouraging and maintaining a tribally controlled community college, as a condition to finding a college eligible for Public Law 95-471 programs. Contrary to the Administration's assertions, the amending language of S. 726 does not eliminate the requirement that there be a Secretarial determination of justification for the existence of a tribally controlled community college. S. 726 does not thus "contribute to the creation of facilities that are unnecessary or that have little chance of successful operation" as the Administration contends.

The Administration opposes gradual increases in the maximum per student amounts of grants on the basis that future Federal budget limitations could necessitate lower amounts of funding. Although actual funding under the Act has been consistently less than the amounts authorized, the grant amounts authorized by S. 726 represent the status of need and associated educational costs to address that need sufficient to allow tribally controlled community coleges to function on a level equivalent to other post-secondary institutions.

Section 8 of S. 726 requires the Secretary to allocate 471 funding to colleges independent of his allocation of Snyder Act funding to tribal governments that have apportioned some of their funds to the operation of tribally controlled community colleges with which they are associated. The Administration is opposed to section 8 on the grounds that the "amendment would prevent the Secretary from allocating Department funds in accordance with need and would contribute to disparities in funding of tribally controlled community colleges". Funding under the Act is allocated on the basis of a formula that is based on full-time equivalency student counts. Disparities in funding thus naturally result as a function of varying enrollment in the respective colleges. The Act does not vest the Secretary with discretionary authority to allocate 471 funding on the basis of need. Snyder Act funding received by tribal governments is only allocated to the operation of a tribally controlled community college if the tribal government has determined that some of the funds it receives under the authority of the Snyder Act should be so apportioned. This apportionment will thus also vary depending upon the priorities established by the tribal government with which a college is affiliated. In the past, the Secretary has attempted to interfere with the tribal prerogatives of apportioning Snyder Act funds, by offsetting those funds with 471 funds. Congress expressed its intent to funds all tribally controlled community colleges equally on the basis of the formula contained in the Tribally Controlled Community College Assistance Act of 1978. Consistent with the Federal policy of Indian self-determination, the amendment proposed by S. 726 is intended to protect the integrity of the tribal priority-setting system established by the Department of the Interior to allow tribes meaningful participation in the Federal budget preparation process.

Section 10 of S. 726 represents a compromise between provisions of the original House and Senate bills of the 97th Congress regarding the funding of newly-qualified colleges. Rather than excluding newly-qualified colleges from funding until each existing college has received funds equal to its current student count times the authorized per student amount, S. 726 allows newly-qualified colleges

to be funded after existing colleges have received the total amount of funds that they received in the preceding fiscal year. If funding is limited in a particular fiscal year, existing colleges do not receive an increase based on increased enrollment before newly-qualified colleges can be funded. Section 10 is intended to provide a middle ground where existing colleges are not penalized because new colleges came into the system and where new colleges are not indefinitely "locked-out" of funding because increases in enrollment at existing colleges consume any increase in appropriations that Congress may enact. The Administration's comments on this section do not reflect the changes that have been made to the section in the 98th Congress, but are rather relevant only to the 97th Congress version of the bill to reauthorize the Tribally Controlled Community College Assistance Act of 1978.

The Administration states no reason for its opposition to section 11 of S. 726 which authorizes the Administrator of General Services to study facilities that might be available for use by a tribally controlled community college for the purpose of identifying the need for the renovation, repair, or reconstruction necessary to comply with local building codes or the need for new construction. For reasons stated above, the Committee believes that the renovation and repair of abandoned or unused facilities is a practical and fiscally-responsible means of securing the facilities needed by tribally controlled community colleges to obtain accreditation.

The Administration opposes the provision of construction grants to colleges on the basis that such funding is not appropriate in this time of fiscal restraint. The Administration states further that it believes that the provision of facilities is the appropriate responsibility of the tribal governments involved. The provision of construction grants on the condition that tribes supply a portion of the cost of such construction is based upon findings that tribal governments do not have the resources, nor the means of acquiring the resources, necessary to enable construction of facilities for tribally controlled community colleges that are so critical to obtaining accreditation.

The Administration opposes the creation of an endowment program for tribally controlled community colleges on the basis that such a program is not appropriate in the current budgetary climate. Consistent with Administration policy, S. 726 seeks to assure the future financial independence of tribally controlled community colleges by authorizing colleges to secure matching-share endowments from the private sector. The Committee believes that stimulation of private support for tribally controlled community colleges is a sound investment of Federal funds which will guarantee the financial independence of tribal colleges in the future.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on April 13, 1983, by unanimous vote and with a quorum present, recommends that the Senate pass S. 726.

SECTION-BY-SECTION ANALYSIS

Section 1 amends the "Definitions" section of the Act as set forth in section 2.

Section 2 amends the "Definitions" section of the Act, clarifying that the Secretary referred to therein is deemed to refer to the Secretary of the Interior, and provides a new method for determining Indian student count. The new method for determining Indian student count more accurately reflects the number of enrolled students in an entire academic year.

Section 3 amends section 102 of the Act to make clear that the Secretary is directed to make planning grants, subject to appropriations. Section 2 also amends section 102 to make explicit the purposes for which planning grant funds may be expended. Expenditures for academic, educational and administrative purposes and for the operation and maintenance of the college may include community and student services programs and the provision of technical assistance. Section 3 additionally provides that applications for operation and maintenance grants under the Act should include a description of recordkeeping procedures for the expenditure of funds received under the Act which will allow the Secretary to audit and monitor programs conducted with those funds.

Section 4 adds a new section that authorizes the Secretary to reserve from amounts appropriated under the Act, amounts necessary to make planning grants of $15,000 to five applicants [tribes or tribal entities] in order to allow such applicants to determine the need and potential for the establishment of tribally controlled community colleges or for developing proposals for the establishment of such colleges. Section 4 also redesignates the numbering of sections which follow the new section.

Section 5 clarifies that the Secretary shall provide technical assistance upon the requests of tribally controlled community colleges that are currently receiving funds under the Act.

Section 6 replaces the word "eligibility" where the word "feasibility" appears, to more accurately reflect the import of the Secretary's determination that there exists justification for encouraging and maintaining a tribally controlled community college. A positive Secretarial determination of the existence of such justification qualifies the college for eligibility for funding under the authority of Public Law 95-471. Section 6 also clarifies that the Secretary of the Department of Education rather than the Assistant Secretary of Education for the Department of Health, Education, and Welfare is the person with whom the Secretary of the Interior is authorized to enter into agreements. Section 6 provides that a positive determination of eligibility for funding under the authority of Public Law 95-471 shall be effective for the fiscal year succeeding the fiscal year in which the determination is made.

Section 7 provides for a formula premised on Indian student count at each college upon which the funding of tribally controlled community colleges shall be based.

Section 8 provides that grants to colleges under Public Law 95-471 shall not be reduced by virtue of the fact that the tribe with which the college is affiliated has allocated some of its Snyder Act funds to the operation of the college, and that the amount of tribal-

ly-allocated Snyder Act funds shall not be reduced by reason of the fact that the college is receiving funds under the authority of Public Law 95–471. Section 8 also provides that for purposes of eligibility for Title III of the Higher Education Act of 1965, BIA student higher education grants are equivalent to Pell grants.

Section 9 provides for the forward funding of appropriations authorized for tribally controlled community colleges and extends the authorizations for technical assistance and program grants at the current levels for three additional years. Section 9 also provides for funds necessary to the construction of new facilities and for the renovation, repair, and reconstruction of existing facilities.

Section 10 provides for the funding of newly-qualified colleges after existing colleges have received funding based on their Indian student count for the preceding fiscal year. If there are appropriated funds remaining after all colleges have received funding under the Act's formula, each college's proportionate share of funding shall be ratably increased. If there are not sufficient appropriations to fund all colleges, the Secretary shall first allocate funds to existing colleges on the basis of their Indian student count for the preceding fiscal year.

Section 11 authorizes the Administrator of General Service to conduct a study of facilities available for use by tribally controlled community colleges and to report to Congress the results of that study. The study shall evaluate the condition of existing BIA facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities necessary to bring those facilities into compliance with local building codes. The study shall also identify the need for new construction.

Section 12 authorizes the construction of new facilities if in his report to Congress, the Administrator of General Services identifies a need for new construction and provided that the tribally controlled community college supply 20 percent of the cost of such construction.

Section 13 establishes a new Title III of the Act, creating a tribally controlled community college endowment program. Section 13 authorizes grants to be made to tribally controlled community colleges as incentive for private contributions to an endowment fund, on the condition that the college enter into an agreement with the Secretary providing for the establishment and maintenance of a trust fund at a federally insured banking or savings institution. The agreement must also contain other provisions as may be necessary to protect the financial interest of the United States and to promote the purpose of the Title. The funds may be used by the college to defray expenditures associated with the operation of the college, including the expenses of operation and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance. The amount of each Federal capital contribution to the endowment fund is required to be matched by the college. To comply with the matching requirement, the college may use funds which are available from any private or tribal source, including funds which the college receives from tribal allocations of Snyder

Act funds. Section 13 authorizes appropriations of $5,000,000 for each fiscal year from 1985 through 1987 to carry out Title III.

Section 14 directs the Secretary of the Interior to consult with tribally controlled community colleges in promulgating any regulations designed to implement the amendments to the Act.

Cost and Budgetary Considerations

The cost estimates for S. 726 as provided by the Congressional Budget Office are outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 21, 1983.

Hon. Mark Andrews,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 726, Amendments to the Tribally Controlled Community College Act, as ordered reported by the Senate Select Committee on Indian Affairs, April 13, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin,
Director.

Congressional Budget Office Cost Estimate

1. Bill number: S. 726.

2. Bill title: Amendments to the Tribally Controlled Community College Act.

3. Bill Status: As ordered reported by the Senate Select Committee on Indian Affairs, April 13, 1983.

4. Bill Purpose: The purpose of this bill is to amend the Tribally Controlled Community College Act to extend the authorization for appropriation to 1987 and to put the funds on a forward funded basis. This bill is subject to subsequent appropriations actions.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level:					
Grants to tribally controlled community colleges		60.0	30.0		
Technical assistance		6.4	3.2		
Endowment program		5.0	5.0	5.0	
Total authorization level [1]		71.4	38.2	5.0	
Estimated total outlays		32.5	41.9	35.9	4.3

[1] Funding levels for construction and reconstruction grants are to be based on the result of a General Services Administration (GSA) study of facilities to be undertaken and thus are not included in this estimate.

The cost of this bill falls within function 500.

Basis of estimate: The grants to tribally controlled community colleges and the technical assistance grants are authorized on a current year basis through 1984 under the Omnibus Budget Reconciliation Act of 1981. This bill authorizes funding for 1985 through 1987 for these grants on a forward funded basis. Since these amendments are effective beginning in fiscal year 1985, the authorization level for 1985 includes both the current year authorization for 1985 and the forward funded level for 1986. The estimated outlays assume full appropriation of authorization levels and reflect both current year and forward funding spending rates.

The authorization levels for the new endowment program are those specifically stated in the bill. Outlay estimates assume full appropriation of authorization levels and 100 percent spending in the first year.

This bill also includes open-ended authorizations for construction grants and GSA renovation. The amount of these grants and renovation projects would be based on a facilities study conducted by the GSA to be completed by September 1985. Until the study is completed the amount of these grants cannot be estimated. The cost of conducting this study is estimated to cost GSA approximately $100 thousand.

6. Estimated cost to state and local governments: The Congressional Budget Office has determined that the budgets of state and local governments would not be affected directly by the enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 20, 1983, CBO prepared an estimate on H.R. 2307, Amendments to the Tribally Controlled Community College Act, as ordered reported by the House Education and Labor Committee. The cost of these bills is the same, however, H.R. 2307 allows for the 1985 forward funding in 1984.

9. Estimate prepared by: Deborah Kalcevic.

10. Estimate approved by: C. G. Nuckols, (For James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 726 will have no regulatory or paperwork impact.

Executive Communications

The legislative report on S. 726 received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 726, a bill "To amend and extend the Tribally Controlled Community Colleges Assistance Act of 1978."

We would not object to enactment of S. 726, if it is amended as suggested in this report.

The first section of S. 726 would amend the "Definitions" section of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801) by altering the definition of "Indian"; clarifying the role of the Secretary of the Interior in determining satisfactory progress toward accreditation by a college; and adding a new paragraph (7) containing a method for counting Indian students. We believe this amendment is unnecessary. In administering the Act, we have found the current definitions to be accurate and appropriate ones. We therefor recommend that this section be deleted from S. 726.

Section 2 of S. 726 would provide for grants that could be used for the improvement and expansion of physical facilities of tribal colleges. We do not currently provide funds for improvement or expansion of such facilities. When the program was originally conceived, Congress contemplated use of existing community facilities. The implementation of a major new building program when there are so many other competing tribal needs appears to us to be duplicative, unwarranted, and inadvisable under current economic conditions. In addition, the assumption of the cost of an entire new building program, as well as renovation and maintenance, is ill-timed and could add to an already burgeoning budget deficit. Funds provided through the Bureau of Indian Affairs for the tribally controlled community colleges assistance program have been limited to program support only. We do not support broadening those limits.

Section 3(a)(1) of S. 726 would require the Secretary to provide grants to tribally controlled community colleges, rather than authorize him to do so, as is currently stipulated by the Act. This provision would restrict unnecessarily the Secretary's ability to allocate funds efficiently and we object to its inclusion in the bill.

Section 4 of S. 726 would redesignate sections 104 through 114 of the Act as sections 105 through 115 respectively, and insert a new section 104 which would provide for planning grants to be made to tribes and trbial entities for the purpose of developing proposals for establishment of new tribally controlled community colleges or for determining the need and potential for such colleges. The number of such grants would not exceed five per year in the amount of $15,000 for each grant. We believe it is likely that a tribe which is interested in such planning could provide $15,000 for planning from its own funds. We also believe tribal needs and interests, rather than additional funds, will best motivate the analysis and development that are necessary to meet new educational needs and

opportunities. Accordingly, we have concluded that this analysis and planning is best done at the option of the individual tribes within available resources and as part of their regular developmental processes. In light of the Administration's efforts to decrease Federal spending, we cannot support a request for the additional funds this section would require.

Section 5 of S. 726 would limit recipients of technical assistance grants to those colleges already receiving funds under the Act. This could prevent new institutions from receiving such assistance. This is inherently unfair because institutions seeking to become qualified for grants may be in greater need of technical assistance than older, more established institutions.

Section 6 of S. 726 would amend section 106 of the Act to change the term "feasibility" to "eligibility" and would broaden substantially the scope of grants provided to tribally controlled community colleges. Under the current Act, no grant applications may be considered by the Secretary unless a feasibility study has been conducted and it has been determined that the proposed community college will service a reasonable Indian student population. By eliminating the requirement that proposed community colleges demonstrate feasibility, S. 726 would contribute to the creation of facilities that are unnecessary or that have little chance of successful operation.

Section 7 of S. 726 would gradually increase the maximum per student amount of grants. We understand that these figures reflect projected inflation-caused increases in the education sector as set forth by the Congressional Budget Office. However, actual funding has been less than the $4,000 per student currently provided under the Act, and it is possible that future Federal budget limitations could necessitate even lower amounts of funding. We therefore oppose this section.

Section 8 of S. 726 would require the Secretary to provide funding under both this bill and the Snyder Act without considering funding received under the other authority. This amendment would prevent the Secretary from allocating Department funds in accordance with need and would contribute to disparities in funding of tribally controlled community colleges. We recommend that section 8 be amended by inserting the word "solely" after the word "altered" in the new section 109(b)(1), and inserting the word "solely" after the date "November 2, 1921," in the new section 109(b)(2).

Section 10 of S. 726 would amend section 111(a) of the Act to prevent funding of any newly qualified colleges if such funding would result in reducing the per capita amount received by the previously funded colleges to an amount less than they received in the previous year. If enacted, this section could result in the virtual "lock out" of funding for any newly qualified colleges, by limiting funding to only those colleges already receiving support under the Act. We believe this is unfair and therefore oppose the provision.

Section 11 of S. 726 would provide that the Administrator of General Services study the facilities of tribally controlled community colleges to identify the need for new construction, remodeling, repair, alteration, and reconstruction necessary to comply with

local building codes. We understand that the GSA opposes this provision and we concur in that position.

Section 12 of S. 726 would amend the redesignated section 113 of the Act to allow the Secretary to provide construction grants to those colleges where facilities are deemed by the Administrator of General Services to be in need of new construction. It also sets forth the criteria to be met by colleges applying for such grants. We oppose this provision because we do not believe such funding is appropriate in this time of fiscal restraint. Further, we believe that the provision of these facilities is the appropriate responsibility of the tribal governments involved.

Section 13 of S. 726 would amend the Act by adding a new title III, which would provide for an endowment program for the colleges. Funding would be provided by endowment grants from $5 million to be appropriated to carry out the terms of title III for fiscal years 1985, 1986 and 1987; a matching contribution from the college would also be required. We do not believe such a program is appropriate in the current budgetary climate.

We remain fully committed to improving the Nation's Indian education programs, which we believe are a vital component of this Administration's policy as expressed in the President's Statement on Indian Policy of January 24, 1983, and of the Indian tribes' objective of self-determination. However, we believe that these goals, along with the Administration's other goals for national economic recovery, would be better served if S. 726 is amended as suggested in this report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

KENNETH L. SMITH,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law are as follow (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978

DEFINITIONS

SEC. 2(a) For purposes of this Act, the term—

(1) "Indian" means a person who is a member of an Indian tribe [and is eligible to receive services from the Secretary of the Interior];

(2) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special pro-

grams and services provided by the United States to Indians because of their status as Indians;

(3) "Secretary", unless otherwise designated means the Secretary of the Interior;

(4) "tribally controlled community college" means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965, except that clause (2) of such section shall not be applicable *and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior;*

(6) "national Indian organization" means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the field of Indian education; and

[(7) "full-time equivalent Indian student" means the number of Indians enrolled full-time, and the full-time equivalent of the number of Indians enrolled part-time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve) in each tribally controlled community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term.]

(7) "Indian student count" means a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined in a manner consistent with subsection (b) of this section on the basis of the quotient of the sum of the credit hours of all Indian students so enrolled, divided by twelve.

(b) For the purpose of determining the Indian student count pursuant to paragraph (7) of subsection (a), such number shall be calculated on the basis of registrations of Indian students as in effect at the conclusion of the third week of each academic term. Credits earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term. Indian students earning credits in any continuing education program of a tribally controlled community college shall be included in determining the sum of all credit hours. For such purposes, credits earned in a continuing education program shall be converted to a credit-hour basis in accordance with the tribally controlled community college's system for providing credit for participation in such program.

TITLE I—TRIBALLY CONTROLLED COMMUNITY COLLEGES

PURPOSE

SEC. 101. It is the purpose of this title to provide grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities

for Indian students, *and to allow for the improvement and expansion of the physical resources of such institutions.*

GRANTS AUTHORIZED

SEC. 102. (a) The Secretary [is authorized] *shall, subject to appropriations,* make grants pursuant to this title to tribally controlled community colleges to aid in the postsecondary education of Indian students.

(b) Grants made pursuant to this title shall go into the general operating funds of the institution [to defray the expense of activities related to education programs for Indian students] *to defray, at the determination of the tribally controlled community college, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college".* Funds provided pursuant to this title shall not be used in connection with religious worship or sectarian instruction.

ELIGIBLE GRANT RECIPIENTS

SEC. 103. To be eligible for assistance under this title, a tribally controlled community college must be one which——

(1) is governed by a board of directors or board of trustees a majority of which are Indians;

(2) demonstrates adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians; and

(3) if in operation for more than one year, has students a majority of whom are Indians.

PLANNING GRANTS

SEC. 104. (a) The Secretary shall establish a program in accordance with this section to make grants to tribes and tribal entities to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled community colleges, or to determine the need and potential for the establishment of such colleges.

(b) The Secretary shall establish, by regulation, procedures for the submission and review of applications for grants under this section.

(c) From the amount appropriated to carry out this title for any fiscal year (exclusive of sums appropriated for section 105), the Secretary shall reserve (and expend) an amount necessary to make grants to five applicants under this section of not more than $15,000 each, or an amount necessary to make grants in that amount to each of the approved applicants, if less than five apply and are approved.

TECHNICAL ASSISTANCE CONTRACTS

SEC. [104.] *105.* The Secretary shall provide, upon request *from a tribally controlled community college which is receiving funds under section 108,* technical assistance [to tribally controlled community colleges] either directly or through contract. In the awarding of contracts for technical assistance, preference shall be given to an organization designated by the tribally controlled community

college to be assisted. No authority to enter into contracts provided by this section shall be effective except to the extent authorized in advance by appropriations Acts.

[FEASIBILITY] *ELIGIBILITY* STUDIES

SEC. [105.] *106.* (a) The Secretary is authorized to enter into an agreement with the [Assistant Secretary of Education of the Department of Health, Education, and Welfare] *Secretary of Education* to assist the Bureau of Indian Affairs in developing plans, procedures, and criteria for conducting the [feasibility] *eligibility* studies required by this section. Such agreement shall provide for continuing technical assistance in the conduct of such studies.

(b) The Secretary, within thirty days after a request by any Indian tribe, shall initiate a [feasibility] *eligibility* study to determine whether there is justification to encourage and maintain a tribally controlled community college, and, upon a positive determination, shall aid in the preparation of grant applications and related budgets which will insure successful operation of such an institution. *Such a positive determination shall be effective for the fiscal year succeeding the fiscal year in which such determination is made.*

(c) Funds to carry out the purposes of this section for any fiscal year may be drawn from either—

(1) general administrative appropriations to the Secretary made after the date of enactment of this Act for such fiscal year; or

(2) not more than [10] *5* per centum of the funds appropriated to carry out section [106] *107* for such fiscal year.

GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

SEC. [106.] *107.* (a) Grants shall be made under this title only in response to applications by tribally controlled community colleges. Such applications shall be submitted at such time, in such manner, and will contain or be accompanied by such information as the Secretary may reasonably require pursuant to regulations. *Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this Act which will allow the Secretary to audit and monitor programs conducted with such funds.*

(b) The Secretary shall consult with the [Assistant Secretary of Education of the Department of Health, Education, and Welfare] *Secretary of Education* to determine the reasonable number of students required to support a tribally controlled community college. Consideration shall be given to such factors as tribal and cultural differences, isolation, the presence of alternate education sources, and proposed curriculum.

(c) Priority in grants shall be given to institutions which are operating on the date of enactment of this Act and which have a history of service to the Indian people. In the first year for which funds are appropriated to carry out this section, the number of grants shall be limited to not less than eight nor more than fifteen.

(d) In making grants pursuant to this section, the Secretary shall, to the extent practicable, consult with national Indian orga-

nizations and with tribal governments chartering the institutions being considered.

(e) The Secretary shall report to Congress on January 15 of each year the current status of tribally controlled community colleges and his recommendations for needed action.

AMOUNT OF GRANTS

[SEC. 107. (a) Except as provided in section 110, the Secretary shall, for each academic year, grant to each tribally controlled community college having an application approved by him, an amount equal to $4,000 for each full-time equivalent Indian student in attendance at such college during such academic year, as determined by the Secretary in accordance with such regulations as he may prescribe, except that no grant shall exceed the total annual cost of the education program provided by such college.]

SEC. 108. (a) Except as provided in section 111, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled community college having an application approved by him an amount equal to—

(1) the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 2(a)(7) of this Act, multiplied by

(2)(A) $4,000 for fiscal year 1984,

(B) $5,025 for fiscal year 1985,

(C) $5,415 for fiscal year 1986, and

(D) $5,820 for fiscal year 1987,

except that no grant shall exceed the total cost of the education program provided by such college.

EFFECT ON OTHER PROGRAMS

SEC. [108.] *109. (a)* Except as specifically provided in this title, eligibility for assistance under this title shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b)(1) The amount of any grant for which tribally controlled community colleges are eligible under section 108 shall not be altered because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(2) No tribally controlled community college shall be denied funds appropriated under such Act of November 2, 1921, because of the funds it receives under this Act.

(c) For the purposes of section 312(2)(A)(i) and 322 (a)(2)(A)(i) of the Higher Education Act of 1965, any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary education shall be deemed to have received such assistance under subpart 1 of part A of title IV of such Act.

[APPROPRIATIONS AUTHORIZED]

[SEC. 109. (a)(1) There are authorized to be appropriated, for carrying out section 106, $25,000,000 for each of fiscal years beginning October 1, 1979, and October 1, 1980, and $30,000,000 for the fiscal year beginning October 1, 1981.]

[(2) There are authorized to be appropriated $3,200,000 for each of such three fiscal years, for the provision of technical assistance pursuant to section 104.]

[(b) Unless otherwise provided in appropriations Acts, funds appropriated pursuant to this section shall remain available until expended.]

[(c) Nothing in this title shall be deemed to authorize appropriations for the fiscal year beginning October 1, 1978.]

APPROPRIATION AUTHORIZATION

SEC. 110. (a)(1) There is authorized to be appropriated, for carrying out section 105, $3,200,000 for each of fiscal years 1985, 1986, and 1987.

(2) There is authorized to be appropriated for carrying out section 107, $30,000,000 for each of the fiscal years 1985, 1986, and 1987.

(3) There are authorized to be appropriated such sums as may be necessary to carry out sections 112(b) and 113 for each of fiscal years 1985, 1986, and 1987.

(b)(1) For the purpose of affording adequate notice of funding available under this Act, amounts appropriated in an appropriation Act for any fiscal year to carry out this Act shall become available for obligation on July 1 of that fiscal year and shall remain available until September 30 of the succeeding fiscal year.

(2) In order to effect a transition to the forward funding method of timing appropriation action described in paragraph (1), there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations to carry out this Act, the first of which shall not be subject to paragraph (1).

GRANT ADJUSTMENTS

[SEC. 110. (a) If the sums appropriated for any fiscal year for grants under this title are not sufficient to pay in full the total amounts which approved grant applicants are eligible to receive under this title for that fiscal year, the amounts which such applicants are eligible to receive under this title for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for the same fiscal year, such reduced amounts shall be increased on the same basis as they were reduced. Sums appropriated in excess of the amount necessary to pay in full such total eligible amounts shall be allocated by ratably increasing such total eligible amounts.]

SEC. 111. (a)(1) If the sums appropriated for any fiscal year pursuant to section 110(a)(2) for grants under section 107 are not sufficient to pay in full the total amount which approved applicants are eligible to receive under such section for such fiscal year—

(A) the Secretary shall first allocate to each such applicant which received funds under section 107 for the preceding fiscal year an amount equal to the product of—

(i) the per capita payment for the preceding fiscal year, multiplied by

(ii) such applicant's Indian student count for the current fiscal year;

(B) the Secretary shall next allocate to applicants who did not receive funds under such section for the preceding fiscal year an amount equal to the product of—

(i) the per capita payment for the preceding fiscal year, multiplied by

(ii) such applicant's Indian student count for the preceding fiscal year, in the order in which such applicants have qualified for assistance in accordance with such section so that no amount shall be allocated to a later qualified applicant until each earler qualified applicant is allocated an amount equal to such product; and

(C) if additional funds remain after making the allocations required by subparagraphs (A) and (B) the Secretary shall allocate such funds by ratably increasing the amounts of the grant determined under such subparagraphs.

(2) For purposes of paragraph (1) of this subsection, the term "per capita payment" for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled community colleges under section 107 for such fiscal year by the sum of the Indian student counts of such colleges for such fiscal year. The Secretary shall, on the basis of the most satisfactory data available, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this title.

(b)(1) If the sums appropriated for any fiscal year for grants under section 107 are not sufficient to pay in full the total amount of the grants determined pursuant to subsection (a)(1)(A) the amount which applicants described in such subsection are eligible to receive under section 107 for such fiscal year shall be ratably reduced.

(2) If any additional funds become available for making payments under section 107 for any fiscal year to which subsection (a) or paragraph (1) of this subsection applies, such additional amounts shall be allocated by first increasing grants reduced under paragraph (1) of this subsection on the same basis as they were reduced and by then allocating the remainder in accordance with subsection (a). Sums appropriated in excess of the amount necessary to pay in full the total amounts for which applicants are eligible under section 107 shall be allocated by ratably increasing such total amounts.

[(b)] *(c)* In any fiscal year in which the amounts for which grant recipients are eligible to receive have been reduced under the first sentence of subsection (a) of this section, and in which additional funds have not been made available to pay in full the total of such amounts under the second sentence of such subsection, each grantee shall report to the Secretary any unused portion of received funds ninety days prior to the grant expiration date. The amounts so reported by any grant recipient shall be made available for allocation to eligible grantees on a basis proportionate

to the amount which is unfunded as a result of the ratable reduction, but no grant recipient shall receive as a result of such reallocation, more than the amount provided under section [106] *107*(a) of this title.

[REPORT ON CURRENT FACILITIES]

[SEC. 111. The Secretary shall, not later than ninety days after the date of enactment of this Act, prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges, including in his report a survey of Bureau of Indian Affairs existing and planned facilities which may be used for tribally controlled community colleges without disruption of current Bureau programs.]

REPORT ON FACILITIES

SEC. 112. (a) The Administrator of General Services shall provide for the conduct of a study of facilities available for use by tribally controlled community colleges. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than September 30, 1985. Such report shall also include an identification of property—

(1) on which structurally sound buildings suitable for use as educational facilities are located, and

(2) which is available for use by tribally controlled community colleges under section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)(2)) and under the Act of August 6, 1956 (70 Stat. 1057; 25 U.S.C. 443a).

(b) The Administrator of General Services, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations, alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

(c) For the purposes of this section, the term "reconstruction" has the meaning provided in the first sentence of subparagraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(2)(B)).

[STUDY OF FACILITIES NEEDS]

[SEC. 112. The Secretary shall conduct a detailed survey and study of the academic facilities needs of tribally controlled community colleges and shall report to the Congress not later than November 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of any such college and by the governing body of the tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need.]

CONSTRUCTION OF NEW FACILITIES

SEC. 113. (a) With respect to any tribally controlled community college for which the report of the Administrator of General Services under section 112(a) of this Act identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

(b) In order to be eligible for a grant under this section, a tribally controlled community college—

(1) must be a current recipient of grants under section 105 or 107, and

(2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

(c)(1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled community college shall be required to expend more than $400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled community college may use funds provided under the Act of November 2, 1921 (25 U.S.C. 13), popularly referred to as the Snyder Act.

(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled community college which demonstrates that neither such college nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

(d) If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

(1) the facility ceases to be used by the applicant in a public or nonprofit capacity as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, and

(2) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in furtherance of the general welfare of the community served by the tribal government, title to the facility shall vest in the United States and the applicant (or such tribe if such tribe

is the successor in title to the facility) shall be entitled to recover from the United States an amount which bears the same ratio to the present value of the facility as the amount of the applicant's contribution bore to the original cost of the facility. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

(e) No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

(f) For the purposes of this section—

(1) the term 'construction' includes reconstruction or renovation (as such terms are defined in the first sentence of subparagraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(2)(B))); and

(2) the term "academic facilities" has the meaning provided such term under section 742(a) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(1)).

MISCELLANEOUS PROVISIONS

SEC. [113.] *114.* (a) The Navajo Tribe shall not be eligible to participate under the provisions of this title.

(b)(1) The Secretary shall not provided any funds to any institution which denies admission to any Indian student because such individual is not a member of a specific Indian tribe, or which denies admission to any Indian student because such individual is a member of a specific tribe.

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this title held by an institution determined to be in violation of paragraph (1).

RULES AND REGULATIONS

SEC. [114.] *115.* (a) Within four months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this title.

(b) Within six months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(c) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this title.

(d) Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after the date of enactment of this Act.

TITLE II—NAVAJO COMMUNITY COLLEGE

The Senate Select Committee on Indian Affairs proposes no changes to Title II.

TITLE III—TRIBALLY CONTROLLED COMMUNITY COLLEGE ENDOWMENT PROGRAM

PURPOSE

SEC. 301. It is the purpose of this title to provide grants for the encouragement of endowment funds for the operation and improvement of tribally controlled community colleges.

ESTABLISHMENT OF PROGRAM; PROGRAM AGREEMENTS

SEC. 302. (a) From the amount appropriated pursuant to section 306, the Secretary shall establish a program of making endowment grants to tribally controlled community colleges which are current recipients of assistance under section 107 of this Act or under section 3 of the Navajo Community College Act. No such college shall be ineligible for such a grant for a fiscal year by reason of the receipt of such a grant for the preceding fiscal year.

(b) No grant for the establishment of an endowment fund by a tribally controlled community college shall be made unless such college enters into an agreement with the Secretary which—

(1) provides for the establishment and maintenance of a trust fund at a federally insured banking or savings institution;

(2) provides for the deposit in such trust fund of—

(A) any Federal capital contributions made from funds appropriated under section 306;

(B) a capital contribution by such college in an amount equal to the amount of each Federal capital contribution; and

(C) any earnings of the funds so deposited;

(3) provides that such funds will be deposited in such a manner as to insure the accumulation of interest thereon at a rate not less than that generally available for similar funds deposited at the same banking or savings institution for the same period or periods of time;

(4) provides that, if at any time such college withdraws any capital contribution made by that college, an equal amount of Federal capital contribution shall be withdrawn and returned to the Secretary for reallocation to other colleges;

(5) provides that no part of the net earnings of such trust fund will inure to the benefit of any private person; and

(6) includes such other provisions as may be necessary to protect the financial interest of the United States and promote the purpose of this title and as are agreed to by the Secretary and the college, including a description of recordkeeping procedures for the expenditure of accumulated interest which will allow the Secretary to audit and monitor programs and activities conducted with such interest.

USE OF FUNDS

SEC. 303. Interest deposited, pursuant to section 302(b)(2)(C), in the trust fund of any tribally controlled community college may be periodically withdrawn and used, at the discretion of such college, to defray any expenses associated with the operation of such college,

including expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

COMPLIANCE WITH MATCHING REQUIREMENT

SEC. 304. For the purpose of complying with the contribution requirement of section 302(b)(2)(B), a tribally controlled community college may use funds which are available from any private or tribal source.

ALLOCATION OF FUNDS

SEC. 305. (a) From the amount appropriated pursuant to section 306, the Secretary shall allocate to each tribally controlled community college which is eligible for an endowment grant under this title an amount for a Federal capital contribution equal to the amount which such college demonstrates has been placed within the control of, or irrevocably committed to the use of, the college and is available for deposit as a capital contribution of that college in accordance with section 302(b)(2)(B), except that the maximum amount which may be so allocated to any such college for any fiscal year shall not exceed $350,000.

(b) If for any fiscal year the amount appropriated pursuant to section 306 is not sufficient to allocate to each tribally controlled community college an amount equal to the amount demonstrated by such college pursuant to subsection (a), then the amount of the allocation to each such college shall be ratably reduced.

AUTHORIZATION OF APPROPRIATIONS

SEC. 306. (a) There is authorized to be appropriated to carry out the provisions of this title $5,000,000 for each of the fiscal years 1985, 1986, and 1987.

(b) Any funds appropriated pursuant to subsection (a) are authorized to remain available until expended.

In promulgating any regulations to implement the amendments made by this Act, the Secretary of the Interior shall consult with tribally controlled community colleges.

The amendments made by this Act shall take effect on October 1, 1984.

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